

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2014100339

AMENDED ORDER DENYING
MOTION TO DISMISS

On October 23, 2014, Student filed a motion to dismiss Sacramento City Unified School District's expedited complaint on the ground that Sacramento did not claim that Student had been disciplined or violated any code of student conduct while enrolled in Sacramento. On the same date, Sacramento filed an opposition to the motion. On October 24, 2014, Student filed a reply.

During a telephonic prehearing conference on October 27, 2014, both parties argued the motion. The parties were permitted to file any written supplemental arguments by October 28, 2014. On that date, Sacramento filed a supplemental opposition to the motion to dismiss. On October 29, 2014, the ALJ issued an Order Denying Motion to Dismiss without receipt of a further reply from Student. On October 30, 2014, the Office of Administrative Hearings logged Student's supplemental argument into the electronic docket of this case.¹ This order is therefore amended to consider Student's additional information.

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial

¹ OAH had received Student's additional reply timely before close of business on October 28, 2014.

responsibility].) The jurisdiction of the Office of Administrative Hearings is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.530 (2006), et seq., govern the discipline of special education students. (Ed. Code, § 48915.5, subd. (a).) A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement invoked under the disciplinary provisions, or a manifestation determination; or a school district that believes that maintaining the child in his or her current placement is substantially likely to result in injury to the child or others, each have the right to appeal the district's decision and request and receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).) An expedited due process hearing before OAH must occur within 20 school days of the date the complaint requesting the hearing is filed. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2) (2006).)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), special education law does not provide for a summary judgment procedure.

Here, Student contends that Sacramento was required to follow the manifestation determination process set forth in the IDEA, and had to find that Student violated a code of student conduct, before being permitted to invoke the provisions of law permitting his interim removal to an alternative educational setting. Student's motion to dismiss is supplemented by a declaration under penalty of perjury from his mother. District's supplemental opposition is supported by a declaration under penalty of perjury from Rebecca Bryant, Special Education Director, and correspondence. The parties dispute when or whether Student was enrolled in the District or at his high school of residence, John F. Kennedy High School; when and how Sacramento decided to change his placement and/or offer an interim alternative educational placement; and what procedures Sacramento was or was not permitted to utilize in placing Student pending assessments. For example, Student denies attending Kennedy; and Sacramento claims he enrolled in the district in May 2014, and was placed in general education at Kennedy. Student claims he did not violate a code of conduct; and Sacramento asserts he engaged in significant dangerous behaviors in August 2014, that are of legitimate concern, in light of his prior history. The declarations are insufficient to resolve these disputes.

Student's arguments do not invoke the question of OAH's jurisdiction to hear this case. Rather, his claims are defenses as to the legality of Sacramento's actions. In addition, the law permits either party to appeal a school district's decision regarding a disciplinary change in educational placement or a manifestation determination. (34 C.F.R. § 300.532(a) (2006).) The decision referred to is in the context of the disciplinary procedures applicable to pupils with disabilities. While Sacramento's complaint did not identify the specific date of its decision, it adequately described a decision to offer Student an interim alternative

placement. Sacramento's supplemental information establishes a date in early October 2014. This is sufficient to proceed to hearing. The question whether Sacramento's October 2014 decision to change Student's placement and to offer an interim alternative educational placement for not more than 45 school days complied with the law therefore requires an evidentiary hearing.

Since Student's motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits, the motion is denied. All dates currently set in this matter are confirmed.

DATE: October 31, 2014

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings